Scottish Information Commissioner
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Decision Notice 255/2026

Specified data from named sewage treatment works

Authority: Scottish Water
Case Ref: 202501013

Summary

The Applicant asked the Authority for environmental information related to the treatment of sewage at five, named, wastewater treatment works. The Authority disclosed a small amount of information but notified the Applicant that it did not hold the remainder of the information in the format he had requested. The Commissioner investigated and found that the Authority complied with the EIRs in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "applicant" and "the Commissioner") (paragraphs (a), (b), (c) and (f) of definition of "environmental information"), (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2) and (4)(a) (Exceptions from duty to make information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 23 April 2025, the Applicant made a request for information to the Authority. He asked for sewage treatment data and final effluent quality monitoring data for five specified wastewater treatment works (STW's).

A full copy of the request is available at Appendix 1, but in summary, he requested:

i) All inlet sewage inlet flow, flow to full treatment, flow passed forward and final effluent as appropriate for each STW at a granularity of 15-min intervals or smaller interval again as appropriate for each STW

ii) All SPOT testing and/or sonde based monitoring at "continuous"/15-min granularity of final effluent for parameters such as Ammoniacal Nitrogen, BOD, Suspended Solids or as required in the SEPA licenses identified in the table provided (See Appendix 1)

iii) The minimum flow to full treatment when spiling and the storm tank capacity when appropriate for each STW.

2. The Authority responded to parts (ii) and (iii) of the request on 22 May 2025. It informed him that it did not hold all of the information in the format he had requested. Specifically, under point (ii) it explained that it did not hold information in 15-minute intervals, but it provided him with some information that was relevant to point (iii). The Authority applied regulation 10(4)(a) of the EIRs to the information it did not hold.

3. Later, on 30 May 2025, the Authority responded to part (i) of the request. The Authority explained that it did not hold all, or some, of the information in the format requested, and it stated that 15-minute flow data was not readily available in the format required. The Authority provided some information for the Balfron site but, for the remainder, it applied regulation 10(4)(a) of the EIRs stating that it did not hold the information in a readily available format.

4. On 2 June 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the response because he did not accept that the 15-minute flow data was not readily available in the format requested for part (i) of his request.

5. The Authority notified the Applicant of the outcome of its review on 25 June 2025. The Authority upheld its initial response but, by way of providing advice and assistance to the Applicant, and recognising that it did not fulfil the request, the Authority gave additional explanation to the Applicant regarding its position and disclosed eight weeks of data for the specified Alloa, Biggar, Cupar and Dalderse sites.

6. On 30 June 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review, because he considered the Authority should have been able to provide him with the data that he had requested.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

8. On 19 August 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.

9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions, relating to how it collected the specified wastewater treatment data from the named locations.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Handling in terms of the EIRs

11. The Authority considered the Applicant's request in accordance with the EIRs, on the basis that the information was environmental information as defined in regulation 2(1) of the EIRs.

12. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.

13. It is clear from the terms of the Applicant's request, that any information falling within the scope of the request would be environmental information, as defined in paragraphs (a), (b), (c) and (f) of regulation 2(1) of the EIRs.

14. The Commissioner would also note that he can see no detriment to the Applicant by considering his request under the EIRs rather than FOISA, nor has the Applicant disputed the Authority's decision to handle his request under the EIRs.

Section 39(2) of FOISA – Environmental information

15. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.

16. In this case, the Commissioner accepts that the Authority would have been entitled to apply this exemption to the information requested, given his conclusion that it is properly classified as environmental information.

17. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the requests under the EIRs) outweighs any public interest in disclosing the information under FOISA.

18. The Commissioner therefore concludes that the Authority was entitled to apply section 39(2) of FOISA and to consider the Applicant's information request under the EIRs. He will therefore consider this case, in what follows, solely in terms of the EIRs.

Regulation 5(1) of the EIRs – Duty to make environmental information available

19. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request.

20. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

21. Under the EIRs, a public authority may refuse to make environmental information available if one of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

Regulation 10(4)(a) – Information not held

22. Regulation 10(4)(a) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when it received the request.

23. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

24. The Commissioner also considers, where appropriate, any reasons offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

The Applicant's comments

25. The Applicant commented that he had extensive experience of asking for sewage flow information from water and sewerage companies in England and Wales over the past seven years and that this type of information was absolutely necessary for regulators and other third parties to check compliance with licenses issued to water companies for the discharge of effluent to watercourses.

26. The Applicant noted that his normal practice was to ask for several years of sewage treatment works flow data at a resolution of 15-min intervals and that typically, he received around 35,000 pairs of numbers (date/time and flow rate) for each year per location within the statutory timescales.

27. For the request under discussion here, the Applicant submitted that had asked the Authority to provide 15-min sewage treatment flow data for the period 2020 to 2024 for five sewerage treatment works. He commented that the Authority's response was to provide a single number (the average daily flow) for each STW and each year, and that its position was that the detailed treatment data was not necessarily required under its licence conditions. He noted that the Authority had informed him that, in some cases, data submission to the regulator (the Scottish Environment Protection Agency (SEPA)) under licence conditions was at five yearly intervals.

28. The Applicant stated that this was the first time he had not been provided with the full data he had requested.

29. The Applicant sought advice from the Authority, asking it to provide a list of sewage treatment works where more detailed information was available in order to avoid asking for data that did not exist. The Authority responded as follows:

"Due to the capacity limitations of [the Authority's] telemetry system, only 8 weeks of data can be readily extracted for any single signal. Requests for data beyond this period must be submitted through an Information Technology (IT) request form, by the relevant Process Scientist.

IT requests of this nature are processed with low priority, as the categorization of IT tasks are determined automatically based on their nature and complexity. This makes it very difficult to escalate the timescales for such requests. Once the data is extracted by IT, the data is returned to the Process Scientist for review.

For telemetry data requests, the process involves locating signals, completing the form for each signal and WwTW (Wastewater Treatment Works) and reviewing the data provided by IT. This typically takes around 4 hours per signal and WwTW, excluding IT processing time and any additional work for commentary or addressing anomalies. We have been advised that there will be at least four signals for each of the WwTWs where 15-minute interval data has not already been provided."

30. The Applicant argued that the Authority's advice to him suggested that it was possible to provide the data he requested but it was clear that the Authority was only willing to provide eight recent weeks' worth of data instead of four years' worth as he had requested. He considered this was unreasonable and that it revealed an apparent inability of the regulator (SEPA) to carry out robust regulatory checks on the Authority's licences to discharge to watercourses.

31. Given the Applicant's comments that this was the first time he had not been provided with the information he had asked for, the investigating officer asked the Applicant about any previous engagement with the Authority. In response, the Applicant recounted a previous experience in relation to Bowhouse sewage treatment works, where the Authority had initially denied there were any licensing requirements to monitor the storm tank or overflow and had only provided this information after the Applicant had pointed out an amendment that had made to the relevant licence and following a subsequent (consequent) site visit by an operative employed by the Authority.

32. In light of the Authority's advice to him (repeated here at paragraph 29), the Applicant was also asked if the provision of raw data, without the need for the Authority to review or process, would be acceptable to him. The Applicant informed the Commissioner that when dealing with water and sewerage companies in England and Wales, he had always been provided with verified sewage flow data if he had asked for it beyond the date when it would have been made available to the relevant regulator. He noted that only when asking for more recent data in the current year would he receive data that had not been verified, and only in those specific circumstances would he find that acceptable. Otherwise, he noted, raw data might be difficult to interpret and liable to errors in labelling.

33. In relation to the information that had been disclosed to him, the Applicant commented that he had concerns about the data he had been given for the Balfron site; he did not believe the data labels were correct and he had doubts over the accuracy of this data. The Applicant also raised concern about the Authority's apparent position regarding its inability to provide the full data requested for this site.

He argued that although the licensing requirement applied by SEPA was for flow data to be provided every five years, he doubted that the flow meters for the Balfron site would be switched off during the other four years. It was his view that the data would be recorded and, therefore, could be made available.

34. For the remaining four sites (Alloa, Biggar, Cupar and Dalderse), the Applicant submitted that he was dissatisfied with the limitations of the data provided. By providing data for a limited number of weeks, and where there was no spill data, the Authority was avoiding any investigation of compliance at these sites.

The Authority's comments

35. The Authority stated that its Wastewater Service Strategy Team and Wastewater Operations Team carried out searches for the information requested and to advise on the response to the request.

36. The Authority stated that it had applied the exception available at regulation 10(4)(a) of the EIRs because it could only provide a portion of the requested information; the remainder was not held in a readily accessible format.

37. The Authority submitted that all of the wastewater treatment works specified in the request were required to report influent and/or effluent flow statistics, but that only the Balfron location was required to report Pass Flow Forward (PFF) statistics. To support this, the Authority provided the Commissioner with a spreadsheet containing, for each site and year captured by the request, details of which data were reportable to SEPA under licence conditions and which were not reportable.

38. For context, the Authority submitted that in order to respond fully to the request for each wastewater treatment works, telemetry data for each location must be examined to determine whether the requested information (in the form of a signal) was available for that location and that there were a number of signals at each location which would require to be individually checked, as follows:

- Alloa – 255 signals
- Balfron – 203 signals
- Biggar – 111 signals
- Cupar – 252 signals
- Dalderse – two telemetry sites: Site 1 – 412 signals, Site 2 – 272 signals

39. The Authority submitted that the naming conventions for these signals were such that it might not be immediately apparent which signal corresponded to the information being requested and, as a result, a member of staff familiar with each site must identify the appropriate signal. Once the correct signal was identified, the Authority explained that the telemetry system permitted the download of up to eight weeks' worth of data into a spreadsheet. The Authority noted that for this request, the Applicant had requested data covering a five-year period.

40. As the Authority explained to the Applicant (as quoted in paragraph 29), for any data period longer than eight weeks, a request form must be submitted by the relevant Process Scientist to the Authority's Information Technology department.

41. The Authority stated that the data must be analysed to ensure it contained only the information requested and to identify any anomalies, such as signal communication failures due to power outages. It explained that, in some instances, a single signal did not provide the information requested and, in these instances, the requested information must be inferred by a combination of other signals available.

42. The Authority was asked to explain the requirements of the relevant pollution control supporting guidance, in the context of the information requested. The Authority confirmed that all five wastewater treatment works captured by the request served a population equivalent of over 2000 and, at the time of the request, the relevant guidance was WAT-SG-13 Municipal sewage works guidance [not currently available online]. The Authority also noted that section 2.5 of this guidance stated that all sewage treatment works serving a population equivalent of over 2000 should normally record continuous flow to full treatment (FFT) in 15-minute intervals.

43. The Authority explained that discharge licences set out the monitoring and reporting requirements. In some cases, licences required continuous/permanent flow monitoring of treated sewage effluent, treated sewage, treated effluent or final effluent, rather than FFT monitoring, and that this meant there might be some differences in terminology between the guidance and the licence requirement. Notwithstanding, it was the Authority's view that these should be equivalent, because there were no overflows between FFT and Final Effluent/Treated Sewage. This was because licences did not specify an FFT value but, rather, specified the minimum PFF rate at the overflow weir(s) and that the last overflow before full treatment was equivalent to FFT or final effluent. The Authority noted that, in some cases, permits required the PFF at overflows to have continuous monitoring and be reported.

44. The Authority explained that the licence requirements for the five wastewater treatment works specified in the request were as follows:

- Alloa – The treated sewage effluent requires a continuous flow monitor and annual reporting of treated sewage flow statistics.
- Balfron - The treated sewage effluent and the PFF at the overflows (combined sewer overflow and settled storm sewage overflow) require continuous flow monitoring and annual reporting of treated effluent flow statistics and the maximum rate of flow passing the overflows.
- Biggar - The treated sewage effluent requires a continuous flow monitor and annual reporting of treated effluent flow statistics.
- Cupar - The treated sewage requires a continuous flow monitor and annual reporting of treated effluent flow statistics.
- Dalderse - The treated sewage and the PFF at overflows require continuous flow monitoring and annual reporting of treated effluent flow statistics. There is no requirement to report PFF at overflows annually.

45. The Authority stated that responding to requests for flow and event data necessitated not only access to telemetry systems, but also a significant degree of technical expertise to ensure accurate and meaningful data extraction.

This involved navigating complex data structures and understanding the intricacies of the telemetry system, including the identification and selection of the correct signals for each asset and time period captured by the request. It argued that the process scientist's expertise was crucial for interpreting which site signals corresponded to influent, effluent, or FFT and accounting for system changes such as the replacement of remote terminal units (RTUs), which resulted in signal changes and potential data gaps.

46. The Authority submitted that large export requests, particularly those involving multiple sites, signals or extended timeframes, placed excessive load on servers and risked system crashes which could affect all users. To mitigate this, the Authority's Telemetry and IT teams advised that extraction queries should be limited to single signals over a maximum one-year period, and that the number of concurrent queries should be restricted. The Authority argued that understanding and applying these operational constraints required a process scientist's technical judgement to avoid disruption and to ensure the integrity of the extracted data.

47. The Authority explained that its telemetry system only allowed extraction of data from the past five years, in line with SEPA's current Permit Guidance WAT-G-065[1] and that retrieving older data involved engagement with its IT team and navigating a process with no guaranteed turnaround time, which required an understanding of both data retention policies and system architecture. Additionally, the Authority argued that a process scientist was essential for reconciling data tied to individual RTU signals, particularly where equipment changes led to signal replacements and the potential deletion of historic data. The Authority submitted that matching up signals over time, especially when multiple influent streams or signal changes were involved, was a complex task best handled by someone with deep technical understanding of both the asset and the telemetry infrastructure.

48. By way of illustration, the Authority explained that a request for influent, effluent and FFT data at 15-minute intervals for a single wastewater treatment works over five years could require at least 15 separate extractions, each taking approximately 30 minutes, plus additional time for signal identification and data reconciliation. If multiple signals were needed to calculate the requested flow, or if signals had changed due to equipment updates, the process scientist's knowledge was indispensable to ensure that the extracted data was both complete and accurate. The Authority submitted that without this expertise, there was a significant risk of misinterpretation, omission, or error in the data provided.

49. The Authority was asked about the possibility of providing raw data to the Applicant in response to his request. The Authority submitted that there were significant practical constraints with the provision of raw, unverified telemetry data. It explained that data extraction was limited by system capacity, server load, and data retention policies. The Authority submitted that older or more complex datasets may only be retrievable by IT and not via the standard extraction tool, and there was no guarantee such data still existed. Therefore, the Authority acknowledged that while provision of raw data was possible in some cases, it was subject to these operational and technical limitations, and was not always feasible, especially for large or historic data requests.

[1] https://beta.sepa.scot/regulation/authorisations-and-compliance/easr-authorisations/water-activities/discharges/discharge-of-sewage-effluent/discharge-from-a-sewage-treatment-works-with-overflows-from-more-than-10-properties-or-50-population-equivalent/

50. The Authority submitted that it was undertaking a programme of work, including a project to explore moving all telemetry data into the "Datalake", and that this development might enable the creation of a new or expanded automation process incorporating all flow and event signals in the future regardless of their reportable status or monitoring requirements. The Authority commented that this would make flow and event data more readily available and reduce reliance on manual extraction tools when responding to requests for information.

51. The Authority was asked about a previous response to the Applicant in relation to a separate request regarding Bowhouse sewage treatment works (as discussed at paragraph 31). The Authority acknowledged that it had responded to this separate request and it provided the Commissioner with a link to its response. The Authority argued, however, that although the previous separate request comprised several parts, none of those related to event signals and durations from overflows. Furthermore, the Authority argued, this previous request from the Applicant did not ask for flow information such as influent, effluent, or FFT data.

52. While the Authority acknowledged that it did hold the basic building blocks of the information that had been requested by the Applicant, it argued that the primary use of this information was to fulfil its regulatory obligations for SEPA. It submitted that if it was to satisfy the Applicant's request, it would need to undertake complex tasks and analysis, which would essentially result in the creation of new information.

53. In conclusion, the Authority submitted that, for the reasons given, it did not hold the information requested for Alloa, Biggar, Dalderse or Cupar locations as a defined, discrete dataset which could be disclosed. The Authority submitted that it had disclosed some of the requested information for the Balfron location (that covered by the time period 2022 to 2024) and that data for 2025 had not been available at the time of the Applicant's request because it had not been analysed, reviewed and reported at that time. The Authority submitted that it did not hold the remaining information as a defined, discrete dataset ready for disclosure.

The Commissioner's view

54. The Commissioner has carefully considered the submissions from both parties. He would emphasise again that his role involves consideration of what, on the balance of probabilities, an authority actually holds at the time a request was received, as opposed to what an applicant may believe the authority should hold. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.

55. The Commissioner acknowledges the Applicant's view (as discussed in paragraph 30) that the information which has been disclosed to him may be inaccurate. However, the Commissioner cannot comment on the accuracy of the information provided - he is restricted to determining whether the Authority held recorded information which would satisfy the terms of the Applicant's request.

56. Notwithstanding, the Commissioner has given the Applicant's concerns serious weight and he has questioned the Authority extensively in relation to the information it collects and which would be captured by the Applicant's request.

57. The Commissioner's guidance on regulation 10(4)(a) of the EIRs states:

"Public authorities are not required to create information in order to answer a request. There's a distinction between creating new information, and compiling information. Where a request can be answered by compiling information from readily-available resources held by the public authority, this is not the same as creating new information. However, if compiling information in order to respond to a request would require skill and complex judgement, it is less likely that the information can be said to be held for the purposes of the EIRs."

58. Overall, the Commissioner is persuaded by the Authority's explanations regarding the monitoring data it collects and whether or not it is held in the specific format requested by the Applicant. The Commissioner notes that the Authority has confirmed that it holds the "building blocks" of the information requested by the Applicant, but that it would require complex skill and judgement to collate the information into the format requested by the Applicant.

59. Given the explanations and submissions provided, the Commissioner accepts that the Authority would need to exercise skill and complex judgement to compile information in order to respond to the Applicant's request and, even then, it is possible (indeed, likely) that a complete response would not be possible.

60. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide and neither can he, as noted in paragraph 23 in Decision 050/2021,[2] instruct a public authority to change its record keeping systems (or in this case, data gathering systems). In addition, it is always possible that different authorities, even ones which perform the same or substantially similar functions in different areas, will not necessarily record the same kind of information in the same way.

61. The Commissioner accepts that the Authority took proportionate steps in the circumstances of this case to establish if the information was held and he is satisfied that it does not (and did not, on receipt of the request) hold the information requested by the Applicant for the purposes of EIRs.

62. The Commissioner understands why the Applicant expected the information to be held by the Authority in the format that he specified. However, for the reasons set out above, he is satisfied that this was not the case. He has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information an authority actually holds.

63. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

The public interest

64. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available.

[2] https://www.foi.scot/decision-0502021

65. The question of whether or not a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.

66. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold any information covered by the request, and did not do so, on receipt of the request. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Decision

The Commissioner finds that the Authority complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Head of Enforcement

6 October 2026

Appendix 1: Request

I would be very grateful if you could provide the following data for these STWs for the period 1/1/2020 to the present

SEPA license	Asset ID	Asset Name
CAR/L/1003819	STW001979	ALLOA WWTW NS887918
CAR/L/1010460	STW002010	BALFRON WWTW NS548883
CAR/L/1000190	STW000070	BIGGAR WWTW 2002 NT049369
CAR/L/1001178	STW001980	CUPAR WWTW 1962 NO388148
CAR/L/1003809	STW001975	DALDERSE WWTW 1966 NS903822

(i) All inlet sewage inlet flow, flow to full treatment, flow passed forward and final effluent as appropriate for each STW at a granularity of 15-min intervals or smaller interval again as appropriate for each STW;

(ii) All SPOT testing and/or sonde based monitoring at “continuous”/15-min granularity of final effluent for parameters such as Ammoniacal Nitrogen, BOD, Suspended Solids or as required in the SEPA licenses identified in the table above.

(iii) The minimum flow to full treatment when spilling and the storm tank capacity where appropriate for each STW.